

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. M-09/08-436
)
 Appeal of)

INTRODUCTION

The petitioner appeals the decision by Department for Children and Families, Family Services Division substantiating a report of physical abuse by the petitioner under 33 V.S.A. § 4912 perpetrated against his daughters.

A hearing in this matter was held on January 23, 2009.

The following findings of fact are based on the testimony and documents submitted at that hearing.

FINDINGS OF FACT

1. The petitioner is the father of a two-year-old daughter and the step-father of a seven-year-old girl, and he lives with these children and their mother.

2. In June 2008 the school that the older girl attends reported to the Department that the girl (then six) had told school personnel that the petitioner had choked her, and that he had held his hand over the mouth of her sister (then sixteen months) to stop her from crying.

3. Two days later a Department investigator interviewed the girl while she was at school. The investigator testified that the girl told her that the petitioner (whom she referred to as her "dad") "picked me up by the neck" while she was in the bathroom. She said she couldn't breathe, and that the petitioner stopped only when her mother came into the room and "took me out of Dad's hands". The girl also reported that the petitioner "hits" her mother, and that he had once pushed her mother down the stairs when she was pregnant.

4. The investigator further testified that the girl told her that she had seen the petitioner put his hand over her sister's mouth so she couldn't breathe because he was "mad" that her sister was crying and wouldn't burp. She told the investigator that out of fear for her sister's safety she had taken her sister into her bedroom and locked the door.

5. As part of her investigation the Department's investigator also interviewed the petitioner and the girls' mother together. She testified that the petitioner denied the allegations, but gave conflicting answers as to whether he was in the bathroom with her that night. He admitted to her that he "screams at" the girls.

6. The girls' mother told the investigator that she was "at work" that night, and had not witnessed anything.

7. In his testimony at the hearing the petitioner again denied the allegations, but he admitted he is "in counseling" about anger issues and that his step-daughter was "afraid" of him, but "confused", when she had reported the incident.

8. The older girl and her mother testified at the hearing as witnesses for the petitioner. The girl answered "no" when the petitioner asked her if he had ever "picked (her) up by the neck" or "suffocated (her) sister". Her rote-like answers and overall demeanor at the hearing indicated that she had been coached by her parents (who were present during her testimony) and was intimidated by them.

9. The girl's credibility was further undermined by her denial to the hearing officer that she had ever reported the incidents to school personnel or to the Department's investigator.

10. In her testimony at the hearing the girls' mother repeated that she was "at work" the night of the incident in the bathroom. She stated that she had never witnessed the petitioner physically harm the children, "just yelling".

11. On cross examination the mother stated that she is now "engaged" to the petitioner, and that he has "gotten better" after he has "taken classes". She admitted that in January 2007 she had gotten a restraining order against the

petitioner after he had pushed down "hard" on her daughter's chest to stop her from crying. She also admitted that during the investigation in June 2008 she had reported that she was "afraid" of the petitioner, and that she felt the children were not "safe" around him.

12. The investigator's case notes show that the mother initiated a call to the investigator to report these concerns shortly after the joint interview she had participated in with the petitioner present.

13. It may well be that the petitioner has commendably taken steps to try to better control his behavior and to improve his relationship with his family. The fact that the petitioner's relationship with his family does appear to have improved probably explains the inconsistent testimony of his fiancé and step-daughter at the hearing. However, this is no basis to actually credit any of that testimony. By contrast, the older girl's and her mother's reports in June 2008 were spontaneous, uncoerced, and consistent. On the basis of those reports it is found that in June 2008 the petitioner, in anger, picked his step-daughter up by neck in a manner that cut off her breathing, and that he covered his younger daughter's mouth, temporarily suffocating her, because he was angry at her for crying.

ORDER

The Department's decision is affirmed.

REASONS

The Department is required to investigate reports of child abuse or neglect and to maintain a registry with the names and records of those who are determined to have a "substantiated" finding of abuse or neglect. 33 V.S.A. § 4913 and 4916. A report is substantiated when it is "based upon accurate and reliable information that would lead a reasonable person to believe that the child has been abused or neglected." 33 V.S.A. § 4912(10).

Any person against whom a report of abuse is substantiated by DCF may appeal to the Human Services Board. In such cases the burden of proof is on the Department. 33 V.S.A. § 4916b.

The statute at 33 V.S.A. § 4912 defines abuse and neglect, in pertinent part, as follows:

- (2) An "abused or neglected child" means a child whose physical health, psychological growth and development or welfare is harmed or is at substantial risk of harm by the acts or omissions of his or her parent or other person responsible for the child's welfare . . .
- (3) "Harm" to a child's health or welfare can occur when the parent or other person responsible for his welfare:

(A) Inflicts, or allows to be inflicted, upon the child, physical or mental injury . . .

- (4) "Risk of harm" means a significant danger that a child will suffer serious harm other than by accidental means, which harm would be likely to cause physical injury, neglect, emotional maltreatment or sexual abuse.

In this case it must be concluded that the Department has met its burden of proof that the petitioner committed acts covered by the above statute. Therefore, its decision substantiating the reports of child abuse in question must be affirmed.

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